

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-369

July 11, 2001

PUBLIC ADVOCATE'S OFFICE
Petition to Initiate Investigation of Issues
Regarding Central Maine Power Company's
May 2001 Bill Insert

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we decline the Public Advocate's request that the Commission open an investigation into Central Maine Power Company's promotional activities.

II. BACKGROUND

On June 2, 2001, the Public Advocate (OPA) filed a request that the Commission investigate, pursuant to 35-A M.R.S.A. §§ 1303 and 1702(3), Central Maine Power Company's (CMP) accounting treatment of costs associated with CMP's May 2001 bill insert that encouraged customers to purchase air conditioners and advertised a contest for a free barbecue grill for those purchasing an air conditioner. Specifically, the OPA asked the Commission to investigate: (1) whether the costs of the May insert and contest entry form and envelope should be recovered from shareholders pursuant to Chapter 83 § 5(C) of the Commission's Rules and not from ratepayers; (2) whether the costs to purchase and disseminate those materials should be separately accounted for in Account 449, pursuant to Chapter 83 § 3; and (3) whether the cost of the grill contest should be considered promotional advertising and be included in periodic and annual reports under Chapter 83 § 2(A). The Public Advocate urged that these questions be answered in the affirmative as in his opinion these activities constitute "promotional advertising" under Chapter 83.

CMP responded to the Petition on June 15, 2001. CMP indicated that it is treating the expenses associated with the bill insert, flyer and envelopes as "promotional advertising" as defined in Chapter 83 § 5(C). As such the costs will be recovered from shareholders or owners. CMP stated that no such costs were in the test year on which current rates are based and any such costs will be excluded in any future rate cases. In addition, because CMP is operating under an Alternative Rate Plan, these expenses like CMP's other costs, reduce net income for shareholders.

CMP further explained that its accounting procedures are consistent with those allowed by the Commission and that it plans to treat the expenses associated with the electric grill contest as promotional advertising and will report these expenses as part of

its annual report as required by Chapter 83 § 2(A). CMP asked the Commission not to open an investigation, as its response addresses the issues raised by OPA.

On July 5, 2001, the Public Advocate responded that, although CMP had addressed the accounting issues, the Commission should investigate the actual costs associated with the air conditioning promotion. OPA also asked the Commission to investigate the “inconsistency between CMP’s desire to promote on-peak consumption of electricity for air conditioners with the State’s public policies that have supported energy efficiency for many years in Maine.” OPA asked that the Commission open a formal investigation into the position that CMP management adopts with respect to its endorsement of incremental on-peak electricity consumption while at the same time implementing ratepayer funded energy conservation program.

CMP responded on July 6 with a breakdown of the costs of the promotion which total \$37,100.¹ It further stated that it has been promoting the purchase of air conditioners with high efficiency ratios and encouraging the proper sizing of air conditioners. It argued against any investigation of its practice of encouraging incremental usage while implementing conservation programs. Chapter 830 allows promotional advertising and CMP claims it is working cooperatively with the State Planning Office in developing conservation programs, pursuant to 35-A M.R.S.A. § 3211.

III. DECISION

In his June 5 petition, the Public Advocate asked the Commission to investigate how CMP was paying and accounting for the expenses associated with its air conditioning promotion. CMP’s response indicates that it is, and plans to remain in compliance with the requirements of Chapter 83 as these costs constitute “promotional advertising” as defined in the Rules. Chapter 83 describes the Commission’s policy that such costs should be recovered from shareholders or owners and accounted for separately. Chapter 83 § 5(C) allows a utility to seek recovery of such expenses in a rate case but CMP has stated it will not seek such treatment. Therefore, the costs will not be paid for by ratepayers. There appears to be nothing further to investigate as to costs, and we decline to do so.

We also decline to open an investigation into the apparent conflict of a T&D utility conducting promotional activities that encourage electrical consumption while at the same time implementing energy conservation programs. As the Public Advocate is aware, both activities are lawful. Although we might question the wisdom (or even the public relations benefits) of promoting air conditioning usage while some states are experiencing energy shortages, such promotions are not unlawful and may constitute

¹ According to CMP, a small portion of these costs are allocable to transmission costs and therefore are under the jurisdiction of FERC; less than \$2,000 (of an approximate \$60 million transmission revenue requirement) would be allocated to transmission rates.

protected free speech (assuming the promotions are truthful) by CMP. There is no evidence, as asserted by OPA, that CMP is specifically promoting on-peak usage. Although CMP claims the ads refer to using air conditioning at night (off-peak), we note that anyone buying an air conditioner could use it anytime the weather is hot, including during on-peak periods, and in our experience might be likely to do so.

We further note, in response to OPA's claim that the promotion conflicts with energy conservation, that the Electric Restructuring Act has moved planning for energy conservation programs away from the utilities to the State Planning Office (SPO). The SPO is charged with developing a State-wide conservation program to be implemented by transmission and distribution utilities. 5 M.R.S.A. § 3305-B. Energy service providers will generally be selected through competitive bids and offer programs consistent with the SPO plan. 35-A M.R.S.A. § 3211. Therefore, in the future, energy conservation programs will largely be beyond the direct control of T&D utilities, removing, to some extent, the mixed incentives that currently exist.

Accordingly, for the reasons described above, we decline to open an investigation as requested by the OPA.

Dated at Augusta, Maine, this 11th day of July, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.